

## CHAPTER 10

[Ch 10 as appeared in 1973 IDR, transferred to Transportation Department]

## PRACTICE AND PROCEDURE BEFORE THE DEPARTMENT OF PUBLIC SAFETY

[Prior to 4/20/88, see Public Safety Department, 680—Ch 10]

## GENERAL PROVISIONS

**661—10.1(17A) Definitions.** As used in the rules contained herein the following definitions apply, unless the context otherwise requires:

“*Act*” means the Iowa administrative procedures Act.

“*Administrative division*” means that division referred to in 661—Chapter 2.

“*Commissioner*” means the commissioner of the department or authorized representative.

“*Contested case*” means a proceeding, including licensing, in which the legal rights, duties or privileges of a party are required by constitution or statute to be determined by the commissioner or department after an opportunity for an evidentiary hearing.

“*Department*” means the Iowa department of public safety.

“*Division*” means each division of the department.

“*Division director*” means the administrator of a division or authorized representative.

“*License*” means the whole or a part of any permit, certificate, approval, registration, charter, or similar form of permission required by statute.

“*Licensing*” means the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

“*Party*” means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, including intervenors.

“*Person*” means any individual, estate, trust, fiduciary, partnership, corporation, association, governmental subdivision, or public or private organization of any character or any other person covered by the Act other than an agency.

“*Petition*” means application for declaratory ruling, initiation of rule-making proceedings or document filed in licensing.

“*Pleadings*” means protest, motion, answer, reply or other document filed in a contested case proceeding.

“*Presiding officer*” means the person assigned to preside over a proceeding whether that be the commissioner or a presiding officer appointed according to Iowa Code chapter 17A.

“*Proceeding*” means licensing, rule making, declaratory rulings, contested cases, informal procedures.

“*Protestor*” means any person entitled to file a protest which can culminate in a contested case proceeding.

Unless otherwise specifically stated, the terms used in these rules promulgated by the department shall have the meaning defined by the Act.

**661—10.2(17A) Scope of rules.** The rules contained in this chapter pertaining to practice and procedure are designed to implement the requirements of the Act and aid in the effective and efficient administration of the department and enforcement of the laws of this state. These rules shall govern the practice, procedure and conduct of informal proceedings, contested case proceedings, licensing, rule making, and declaratory rulings.

As the design of these rules is to facilitate business and advance justice, any rule contained herein, unless otherwise provided by law, may be suspended or waived by the department to prevent undue hardship in any particular instance or to prevent surprise or injustice.

**661—10.3(17A) Business hours.** The principal office of the department in the Wallace State Office Building in Des Moines, Iowa shall be open between the hours of 8 a.m. to 4:30 p.m. each weekday except Saturdays, Sundays and legal holidays as prescribed in the Iowa Code, for the purpose of receiving protests, pleadings, petitions, motions, requests for public information, copies of official documents, or for the opportunity to inspect public records.

All documents or papers required to be filed with the department by these rules shall be filed with the administrative services division in the principal office of the department at the Wallace State Office Building, Des Moines, Iowa 50319. Requests for public information or copies of official documents or the opportunity to inspect public records shall be made in the administrative services division's office at the department's principal office.

**661—10.4(17A) Computation of time, filing of documents.** In computing any period of time prescribed or allowed by these rules or by an applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. Legal holidays are prescribed in the Iowa Code.

**10.4(1)** All documents or papers required to be filed with the department shall be delivered to the department's principal office within such time limits as prescribed by law or by rules or orders of the department. No papers shall be considered filed until actually received by the department.

**10.4(2)** In all cases where the time for the filing of a protest or an appeal or the performance of any other act shall be fixed by law, the time so fixed by law shall prevail over the time fixed in these rules.

**661—10.5(17A) Form and style of papers.** All pleadings, petitions, briefs and motions or other documents filed with the department shall be typewritten, have a proper caption, and have a signature and copies as herein provided or as specified in some other rule.

**10.5(1)** Papers shall be typed on only one side of plain white paper. Pleadings, petitions, motions, orders and other similar papers shall be on paper 8½ inches wide × 11 inches long and briefs may be on paper 8½ inches wide × 11 inches long. Citations shall be underscored.

**10.5(2)** The proper caption shall be placed in full upon the first paper filed.

**10.5(3)** The signature of the petitioner, party, or authorized representative shall be subscribed in writing to the original of all pleadings, petitions, briefs or motions and shall be an individual and not a firm name except that the signature of a corporation shall be the name of the corporation by one of its active officers. The name and mailing address of the party or representative actually signing shall be typed or printed immediately beneath the written signature. The signature shall constitute a certification that the signer has read the document; that to the best of the signer's knowledge, information and belief every statement contained in the document is true and no such statement is misleading; and that it is not interposed for delay.

**10.5(4)** Every pleading, brief or motion shall bear proof of service upon the opposing party as provided by the Iowa rules of civil procedure.

**10.5(5)** Except as otherwise provided in these rules or ordering by the department, an original and three copies of every pleading, brief, motion or petition shall be filed. This shall not be construed to apply to exhibits, documents or papers offered as evidence.

**10.5(6)** All copies shall be clear and legible but may be on any weight paper.

**10.5(7)** Upon motion of an opposing party or on its own, the department may, in its discretion, if a person or party has failed to comply with this rule, require such person or party to follow the provisions of this rule pointing out the defects and details needed to comply with the rule prior to filing.

**661—10.6(17A) Persons authorized to practice before the department.** Due to the legal questions involved and the technical aspects of fire safety regulations and other departmental activities, persons are encouraged to seek the aid, advice, assistance and counsel of practicing attorneys.

The right to practice before the department in connection with any proceeding shall be limited to the following classes of persons:

- 10.6(1)** Persons representing themselves.
- 10.6(2)** Attorneys duly qualified and entitled to practice in the courts of the state of Iowa.
- 10.6(3)** Attorneys entitled to practice before the highest court of record of any other state.
- 10.6(4)** Duly authorized directors or officers of corporations representing the corporation of which they are respectively a director or officer.
- 10.6(5)** Partners representing their partnership.
- 10.6(6)** Fiduciaries.
- 10.6(7)** Government officials authorized by law.

**661—10.7 to 10.99** Reserved.

#### CONFLICT RESOLUTIONS

**661—10.100(17A) Resolution discussion.** Unless an appeal has been filed as provided hereinafter, persons interested in any dispute, claim, licensing matter or any other matters may discuss the resolution of such matters with personnel in the appropriate division or the appropriate officer.

**661—10.101(17A) Protests.** Any person wishing to contest a claim or any other department action, except licensing, which may culminate in a contested case proceeding shall file a protest with the administration division within the time prescribed by the applicable statute or rule for filing notice of application to the department or commissioner for a hearing. Failure to timely file a written protest will be construed as a waiver of opposition to the matter involved unless the commissioner on the commissioner's own motion pursuant to statutory authority exercises the commissioner's power of abatement. Upon failure of a person to submit a proper protest, the department may, in its discretion, either require such person to follow the provisions of this rule pointing out the defects and details needed to comply with the rule before accepting for filing or dismiss the protest for failure to comply with this rule.

**10.101(1)** All protests to be filed with the department shall be filed either by certified mail return receipt requested or by personal delivery in the administration division's office, during business hours.

**10.101(2)** The protest shall be brought by and in the name of the interested or affected person or by and in the full descriptive name of the fiduciary legally entitled to institute a proceeding on behalf of such person or by an intervenor in contested case proceedings. In the event of a variance in the name set forth in the protest and the correct name, a statement of the reason for such discrepancy shall be set forth in the protest.

**10.101(3)** A protest which is filed shall contain:

- a.* A caption in the following form:

BEFORE THE IOWA STATE DEPARTMENT OF PUBLIC SAFETY  
WALLACE STATE OFFICE BUILDING  
DES MOINES, IOWA

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IN THE MATTER OF \_\_\_\_\_ ☆ PROTEST

(state protestor's name, address and designate type of proceeding e.g., building plan approval)

☆ DOCKET NO. \_\_\_\_\_  
☆ (filled in by department)

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*b.* Substantially state in separate numbered paragraphs the following:

- (1) Proper allegations showing jurisdiction of the department;
- (2) A statement of the claim or department action;
- (3) Clear and concise statements of each and every error which the protestor alleges to have been committed by the department. Each assignment of error shall be separately numbered;
- (4) Clear and concise statements of all relevant facts upon which the protestor relies;
- (5) Refer to any particular statute or statutes and any rule or rules involved;
- (6) A prayer setting forth the relief sought by the protestor;
- (7) The signature of the protestor or that of representative;
- (8) A copy of any written information from the department with accompanying statements, if any, so far as material to the issues set forth in the assignments of error shall be appended to the protest;
- (9) Description of records or documents which were not available or were not presented to department personnel prior to the filing of the protest;
- (10) Any other matters deemed relevant and not covered in the above paragraphs;
- (11) The wish of protestor to waive informal or contested case proceedings if so wished; unless the protestor so indicates a waiver, informal procedures will be initiated.

**10.101(4)** The protestor may amend the protest at any time prior to the filing of an answer by the department. After an answer is filed, a protest may be amended only by consent of the department.

**10.101(5)** Upon receipt of the protest, the administrative services division shall docket the protest in the docket kept for that purpose and shall assign a number to the case which number shall be placed on all subsequent pleadings filed in the case. An original and six copies of the protest shall be filed, one copy of which shall be promptly served by the administrative services division upon the commissioner.

**661—10.102(17A) Docket.** The administrative services division shall maintain a docket of all proceedings and each of the proceedings shall be assigned a number. Every matter coming within the purview of these rules shall be assigned a docket number which shall be the official number for the purposes of identification. Upon receipt of a protest, petition for declaratory ruling or petition to initiate rule-making proceedings, the proceeding will be docketed and assigned a number, and the parties notified thereof. This number shall be placed by the parties on all papers thereafter filed in the proceeding.

**661—10.103(17A) Informal procedures.** Persons are encouraged to utilize the informal procedure provided herein so that a settlement may be reached between the parties without the necessity of initiating contested case proceedings. Therefore, unless the protestor indicates a desire to waive the informal procedures in the protest or the department waives informal procedures upon notification to the protestor, such informal procedures will be initiated as herein provided upon the filing of a proper protest.

**10.103(1)** *Protested matters involving administrative actions of the department.* Administrative actions protested shall be informally reviewed by the appropriate division director or delegate. Such review shall include holding of informal conferences with the protestor or representative, correspondence, or such other procedures as may be agreed upon between the protestor and the department. The provisions of 10.103(2) shall not apply to matters covered in this subrule.

**10.103(2)** *Review.* Whether or not protestor waives informal procedures, a review by the appropriate division director or other departmental employees designated by the commissioner will review the protest. The reviewer may refer the matter to the appropriate division for possible resolution or further information. The reviewer shall have the right to request that members of the attorney general's staff provide advice.

**10.103(3)** *Informal procedures.* After review of the protest, the reviewer may delete any items contained in the protest which it determines should not be controverted by the department and, if a protestor has not waived informal procedures, the reviewer may request the protestor and representative to attend an informal conference with the reviewer to explore the possibility of reaching a settlement without the necessity of initiating contested case proceedings or of narrowing the issues presented in the protest if no settlement can be made. The reviewer's proposed findings may be subject to review by the commissioner. The reviewer shall notify the protestor of the reviewer's ultimate findings.

**10.103(4)** *Settlements and stipulations.* Whether or not informal procedures have been waived, if a settlement is reached during informal procedures on all issues, the administration division shall be notified of the settlement reached and an order to that effect shall be drawn up at the request of any party or in the discretion of the administration division, served on the parties, and the case terminated. If informal procedures have not been waived and a settlement is reached during informal procedures on some but not all issues, the administration division shall be notified of the issues settled and an order to that effect shall be drawn up, served on the parties and the order shall govern the issues in protest in any further proceedings.

**10.103(5)** *Prior to case proceedings.* If informal procedures are not utilized or if no settlement can be reached mutually agreeable to the protestor and the department during informal procedures when same are not waived, the protestor and the department are encouraged to stipulate as to all facts on which the parties can agree prior to initiation of contested case proceedings to expedite and facilitate contested case proceedings. The desirability of waiving any provisions of the Act relating to contested case proceedings should also be considered.

**661—10.104(17A) Answer.** On matters covered by 10.103(1), the department shall file an answer to the protest within 30 days of notification to the protestor of the appropriate division director or delegate's written findings and the protestor's written statement to the department that the protestor does not agree with such findings. On matters covered by 10.103(2), the department shall file an answer within 30 days of the notification to the protestor of the reviewer's written findings and the protestor's written statement to the department that the protestor does not agree with the reviewer's findings, except that the department need not file an answer in matters involving application of statutes.

**10.104(1)** The answer shall be drawn fully and completely so as to advise the protestor and the administration division of any facts which are admitted or denied or of any defenses to be asserted by the department. It shall contain a specific admission or denial of each material allegation of fact contained in the protest, a statement of any facts or law upon which the department relies for a defense, and shall contain any affirmative allegations to be relied upon by the department.

**10.104(2)** Each paragraph contained in the answer shall be numbered to correspond with the paragraphs of the protest, unless certain issues presented in the protest have been resolved. An original and three copies of the answer shall be filed with the administrative services division and shall be signed by the commissioner or counsel.

**10.104(3)** The department shall forthwith serve a copy of the answer upon the representative of record, or if there is no representative of record then upon the protestor, and shall file proof of service with the administrative services division at the time of filing of the answer.

**661—10.105(17A) Subpoenas.** Prior to the commencement of a contested case, the department may exercise the authority to subpoena books, papers, and records and shall have all other subpoena powers conferred upon it by law.

**661—10.106 to 10.199** Reserved.

#### PREHEARING PROCEDURE

**661—10.200(17A) Commencement of contested case proceedings.** After the filing of the answer and the administration division notifying the presiding officer, or obtaining or designating a presiding officer, the case proceedings will be commenced by the presiding officer through delivery of notice by certified mail return receipt requested to the parties. The notice shall be sent no fewer than 30 days before the date set for the hearing. It shall include:

1. A statement of the time (which shall allow for a reasonable time to conduct discovery), place and nature of the hearing;
2. A statement of the legal authority and jurisdiction under which the hearing is held;
3. A reference to the particular sections of the statutes and rules involved;
4. A short and plain statement of the matters asserted.

**10.200(1)** After the delivery of the notice commencing the contested case proceedings, the presiding officer may allow such further responsive pleadings by the parties as in the officer's discretion is deemed necessary or appropriate.

**10.200(2)** Potential parties to a contested case proceeding may jointly submit to the presiding officer a request to issue the notice as prescribed herein.

**661—10.201(17A) Discovery.** The rules of the supreme court of the state of Iowa, as amended, applicable in civil proceedings with respect to depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission shall apply to discovery procedures in contested case proceedings.

**10.201(1)** All applications for the taking of discovery shall be submitted to the presiding officer who shall determine the frequency of use of these discovery methods as in the officer's discretion is deemed necessary or appropriate to aid the parties in preparation of the contested case proceeding, narrowing issues or other valid reasons.

**10.201(2)** When the department relies on a witness in a contested case, whether or not a departmental employee, who has made prior statements or reports with respect to the subject matter of the witness' testimony, it shall, on request, make such statements or reports available to a party for use on cross-examination, unless those statements or reports are otherwise expressly exempt from disclosure by constitution or statute. Identifiable departmental records that are relevant to disputed material facts involved in a contested case, shall, upon request, promptly be made available to the party unless the requested records are expressly exempt from disclosure by constitution or statute.

**10.201(3)** Evidence obtained in such discovery may be used in contested case proceedings if that evidence would otherwise be admissible in the contested case proceedings.

**661—10.202(17A) Prehearing conference.** The presiding officer, upon the officer's own motion or upon the written request of one of the parties, may, in the officer's discretion and upon written notice,

direct the parties to appear at a specified time and place before the presiding officer for a prehearing conference to consider:

1. The possibility or desirability of waiving any provisions of the Act relating to contested case proceedings by written stipulation representing an informed mutual consent.
2. The necessity or desirability of setting a new date for hearing.
3. The simplification of issues.
4. The necessity or desirability of amending the pleadings either for purpose of clarification, amplification or limitation.
5. The possibility of agreeing to the admission of facts, documents or records not substantially controverted, to avoid unnecessary introduction of proof.
6. The procedure at the hearing.
7. Limiting the number of witnesses.
8. The names and identification of witnesses and the facts each party will attempt to prove at the hearing.
9. Such other matters as may aid in, expedite or simplify the disposition of the proceeding.

**10.202(1)** Since stipulations are encouraged, it is expected and anticipated that the parties proceeding to a hearing will stipulate to evidence to the fullest extent to which complete or qualified agreement can be reached including all material facts that are not or should not fairly be in dispute.

**10.202(2)** Any action taken at the prehearing conference shall be recorded in an appropriate manner, unless the parties enter upon a written stipulation as to such matters or agree to a statement thereof made on the record by the presiding officer.

**10.202(3)** When an order is issued at the termination of the prehearing conference, a reasonable time shall be allowed to the parties to present objections on the ground that it does not fully or correctly embody the agreements at such conference. Thereafter, the terms of the order or modification thereof shall determine the subsequent course of the proceedings relative to matters it includes, unless modified to prevent manifest injustice.

**10.202(4)** Without the necessity of proceeding to an evidentiary hearing on a contested case, the parties may agree in writing to informally dispose of the case by stipulation, agreed settlement, consent order or default or by another method agreed upon. If such informal disposition is utilized, the parties shall so indicate to the presiding officer that the case has been settled.

**661—10.203 to 10.299** Reserved.

#### HEARING PROCEDURES

**661—10.300(17A) Contested case proceedings.** Unless the parties to a contested case proceeding have, by written stipulation representing an informed mutual consent, waived the provisions of the Act relating to such proceedings, contested case proceedings shall be initiated and culminate in an evidentiary hearing open to the public. Evidentiary hearings shall be held at the department's principal office, Lucas State Office Building, Des Moines, Iowa 50319, except that a case may be assigned for hearing elsewhere when deemed necessary to afford a party an opportunity to appear at the hearing with as little inconvenience and expense as practicable. Parties shall have been notified of the date and place of the hearing at least 30 days prior thereto.

**661—10.301(17A) Conduct of proceedings.** A proceeding shall be conducted by a presiding officer who, among other things, shall:

1. Open the record and receive appearances;
2. Administer oaths, and issue subpoenas;
3. Enter the notice of hearing into the record;
4. Receive testimony and exhibits presented by the parties;

5. In the officer's discretion, interrogate witnesses;
6. Rule on objections and motions;
7. Close the hearing;
8. Issue an order containing findings of fact and conclusions of law.

**10.301(1)** Evidentiary proceedings shall be oral and open to the public and shall be recorded either by mechanical means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand reporters shall bear the appropriate costs. The record of the oral proceedings or the transcription thereof shall be filed with and maintained by the department for at least five years from the date of the decision.

**10.301(2)** An opportunity shall be afforded to the parties to respond and argue on all issues involved and to be represented by counsel at their own expense. Unless otherwise directed by the presiding officer, evidence will be received in the following order:

- a. Protestor or appellant,
- b. Intervenor (if applicable),
- c. Department,
- d. Rebuttal by protestor or appellant,
- e. Oral argument by parties (if necessary).

**10.301(3)** If the protestor or appellant is not represented by anyone qualified by these rules to make an appearance, the presiding officer shall explain to the protestor or appellant the rules of practice and procedure and generally conduct a hearing in a less formal manner than that used when a protestor or appellant has a representative qualified to appear. It should be the purpose of the presiding officer to assist any protestor or appellant who appears without such a representative to the extent necessary to allow a fair presentation of evidence, testimony and arguments on the issues.

**10.301(4)** If the parties have mutually agreed to waive the provisions of the Act in regard to contested case proceedings, the hearing will be conducted in a less formal manner or in accordance with the terms of waiver agreement.

**10.301(5)** If a party fails to appear in a contested case proceeding after proper service of notice, the presiding officer may, upon the officer's own motion or upon the motion of the party who has appeared, adjourn the hearing or proceed with the hearing and make a decision in the absence of the party.

**10.301(6)** Contemptuous conduct by any person appearing at a hearing shall be grounds for that person's exclusion from the hearing by the presiding officer.

**661—10.302(17A) Rules of evidence.** In evaluating evidence, the department's experience, technical competence, and specialized knowledge may be utilized.

**661—10.303(17A) Oath.** All testimony presented before the presiding officer shall be given under oath which the presiding officer has authority to administer.

**661—10.304(17A) Production of evidence and testimony.** The presiding officer may issue subpoenas to a party on request, as permitted by law, compelling the attendance of witnesses and the production of books, papers, records or other real evidence.

**661—10.305(17A) Subpoena.** When a subpoena is wished after the commencement of a contested case proceeding, the proper party shall indicate to the presiding officer the name of the case, the docket number and the last known addresses of the witnesses to be called. If evidence other than oral testimony is required, each item to be produced must be adequately described. When properly prepared by the presiding officer, the subpoena will be returned to the requesting party for service. Service may be made personally or by certified mail return receipt requested before the hearing date of the cause which the witness is required to attend. No costs for serving a subpoena will be allowed.

**661—10.306(17A) Evidence having probative value.** Although the presiding officer is not bound to follow the technical common law rules of evidence, a finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Therefore, the presiding officer may admit and give probative effect to evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs.

**10.306(1)** Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The presiding officer shall give effect to the rules of privilege recognized by law.

**10.306(2)** Evidence not provided to a requesting party by subpoena, through discovery or during any informal procedures shall not be admissible at the hearing.

**10.306(3)** Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form by the presiding officer.

**10.306(4)** Objections to evidentiary offers may be made at the hearing and the presiding officer's ruling thereon shall be noted in the record.

**661—10.307(17A) Evidence of a federal determination.** Evidence of a federal determination whether it be a department ruling or regulation or determination letter, a federal court decision or a public law relating to issues raised in the proceeding shall be admissible, and the protestor or appellant shall be presumed to have conceded the accuracy of it unless the protestor or appellant specifically states wherein it is erroneous.

**661—10.308(17A) Copies of evidence.** A copy of any book, record, paper or document may be offered directly in evidence in lieu of the original, if the original is not readily available or if there is no objection. Upon request, the parties shall be given an opportunity to compare the copy with the original, if available. When an original is admitted in evidence, a copy may be substituted later for the original or such part thereof as may be material or relevant upon leave granted in the discretion of the presiding officer.

**661—10.309(17A) Exhibits.**

**10.309(1)** *Identification of exhibits.* Exhibits attached to a stipulation or entered in evidence which are offered by protestors or appellants shall be numbered serially, i.e., 1, 2, 3, etc.; whereas, those offered by the department shall be lettered serially, i.e., A, B, C, etc.; and those offered jointly shall be numbered and lettered, i.e., 1-A, 2-B, 3-C, etc.

**10.309(2)** *Disposition of exhibits.* After an order has become final, either party desiring the return, at that party's own expense, of any exhibit belonging to that party shall make application in writing to the presiding officer within 30 days suggesting a practical manner of delivery; otherwise, exhibits may be disposed of as the presiding officer deems advisable.

**661—10.310(17A) Official notice.** The presiding officer may take official notice of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the department. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data. The parties shall be afforded an opportunity to contest such facts prior to the issuance of the decision in the contested case proceeding unless the presiding officer determines as a part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

**661—10.311(17A) Evidence outside the record.** Except as provided by these rules, the presiding officer shall not consider factual information or evidence in the determination of any proceeding unless the same shall have been offered and made a part of the record in the proceeding.

**661—10.312(17A) Presentation of evidence and testimony.** In any hearing, each party thereto shall have the right to present evidence and testimony of witnesses and to cross-examine any witness who testified on behalf of an adverse party. A person whose testimony has been submitted in written form, if available, shall also be subject to cross-examination by an adverse party. Opportunity shall be afforded each party for redirect examination and recross examination and to present evidence and testimony as rebuttal to evidence presented by another party, except that unduly repetitious evidence shall be excluded.

**661—10.313(17A) Offer of proof.** An offer of proof may be made through the witness or by statement of counsel. The party objecting may cross-examine the witness without waiving any objection.

**661—10.314(17A) Motions.** After commencement of contested case proceedings, appropriate motions may be filed by any party with the presiding officer when facts requiring such motion come to the knowledge of the party. All motions shall state the relief sought and the grounds upon which the same are based.

**10.314(1)** Motions made prior to a hearing shall be in writing and a copy thereof served on all parties and attorneys of record. Such motions shall be ruled on by the presiding officer. The presiding officer shall rule on the motion by issuing an order. A copy of the motion with the ruling noted thereon shall be mailed to the parties and attorneys of record. Motions may be made orally during the course of a hearing; however, the presiding officer may request that it be reduced to writing and filed.

**10.314(2)** To avoid a hearing on a motion, it is advisable to secure the consent of the opposite party prior to filing the motion. If consent of the opposite party to the motion is not obtained, a hearing on the motion may be scheduled and the parties notified. The burden will be on the party filing the motion to show good cause why the motion should be granted.

**10.314(3)** The party making the motion may annex thereto such affidavits as are deemed essential to the disposition of the motion, which shall be served with the motion and to which the opposite party may reply with counter affidavits. Types of motions include but are not limited to:

- a. Motion for continuance.
- b. Motion for dismissal.
- c. Motion for default judgment.
- d. Motion to delete confidential matter in the decision.

**661—10.315(17A) Briefs.** At any time, whether upon the request of any party or not, the presiding officer may require the filing of briefs on any of the issues before the officer prior to or at the time of hearing or at a subsequent time. If briefs have been filed prior to a hearing, the parties should be prepared to make oral arguments as to the law set forth in the briefs at the conclusion of a hearing if the presiding officer so directs.

**10.315(1)** An original and two copies of all briefs shall be filed. Filed briefs shall conform to the requirements of 10.5(17A).

**10.315(2)** Reserved.

**661—10.316(17A) Orders.** At the conclusion of the hearing, the presiding officer, in the officer's discretion, may request or allow the parties to submit proposed findings of fact or conclusions of law, or both.

**10.316(1)** The decision in a contested case is an order which shall be in writing or stated in the record. The order shall include findings of fact prepared by the person presiding at the hearing unless

unavailable and based solely on the evidence in the record and on matters officially noticed and shall include conclusions of law. The findings of fact and conclusions of law shall be separately stated. Findings of fact shall be prefaced by a concise and explicit statement of underlying facts supporting the findings. If a party has submitted proposed findings of fact, the order shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by cited authority or by a reasoned opinion.

**10.316(2)** When a motion has been made to delete identifying details in an order on the basis of personal privacy or trade secrets, the justification for such deletion or refusal to delete shall be made by the moving party and shall appear in the order.

**10.316(3)** When the commissioner initially presides at a hearing or considers an appeal from, or review of the presiding officer's decision, the order becomes the final order of the department for purposes of judicial review or rehearing unless there is an appeal to, or review on motion of a second agency within the time provided by statute or rule. When a presiding officer presides at the hearing, the order becomes the final order of the department for purposes of rehearing unless there is an appeal to, or review on motion of, the commissioner within 30 days of the date of the order. On an appeal from or review of the presiding officer's order, the commissioner has all the power which the commissioner would initially have had in making the decision, however, the commissioner will only consider those issues or selected issues presented at the hearing before the presiding officer. The parties will be notified of those issues which will be considered by the commissioner.

**10.316(4)** Orders will be issued within 30 days of the termination of the hearing unless good cause exists for a further period of time not to exceed a reasonable period. Parties shall be promptly notified of each order by delivery to them of a copy of such order by personal service or certified mail return receipt requested.

**661—10.317(17A) Record.** The record in a contested case shall include:

1. All pleadings, motions and rulings;
2. All evidence received or considered and all other submissions;
3. A statement of all matters officially noticed;
4. All questions and offers of proof, objections, and rulings thereon;
5. All proposed findings and exceptions;
6. The order of the presiding officer.

**661—10.318(17A) Rehearing.** Any party may file an application with the presiding officer for a rehearing in the contested case, stating the specific grounds therefor and the relief sought. The application must be filed within 20 days after the department has issued a final order. A copy of such application shall be timely mailed by the applicant to all parties. The presiding officer shall have 20 days from the filing of the application to grant or deny the rehearing. If the application is granted, a notice will be served on the parties stating the time and place of such rehearing. An application for rehearing shall be deemed denied if not granted by the presiding officer within 20 days after filing.

**10.318(1)** The application for rehearing which is filed shall contain:

- a. A caption in the following form:

BEFORE THE IOWA STATE DEPARTMENT OF PUBLIC SAFETY  
LUCAS STATE OFFICE BUILDING  
DES MOINES, IOWA

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IN THE MATTER OF _____ (state the appellant's name, address and designate type of proceeding, e.g., license application)	* * * *	APPLICATION FOR REHEARING DOCKET NO. _____
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*b.* Substantially state in separate numbered paragraphs the following:

- (1) Clear and concise statements of the reasons for requesting a rehearing and each and every error which the party alleges to have been committed during the contested case proceedings;
- (2) Clear and concise statements of all relevant facts upon which the party relies;
- (3) Refer to any particular statute or statutes and any rule or rules involved;
- (4) The signature of the party or that of the representative.

**10.318(2)** A party's administrative remedies will not be considered exhausted unless an appeal has been made to the commissioner, when applicable, or unless an application for rehearing has been filed.

**661—10.319 to 10.399** Reserved.

HEARING RULES

**661—10.400(17A) Service.** All papers or documents required by law or these rules to be filed with the department, presiding officer, with the opposing party or other person shall be served by personal service or by certified mail return receipt requested unless another rule specifically refers to another method. All notices required by law or these rules to be served on parties or persons by the department or presiding officer shall be served by personal service or certified mail return receipt requested.

**661—10.401(17A) Standards of conduct.** All persons appearing in any proceeding before the department in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of Iowa. If any such person does not conform to such standards, the department may decline to permit such a person to appear in a representative capacity in any future proceeding before the department.

**661—10.402(17A) Ex parte communications.**

**10.402(1) Hearing officers.** If the presiding officer wishes to communicate with any party or person with a personal interest in or engaged in prosecuting or advocating in either the case under consideration or a pending factually related case involving the same parties, the presiding officer shall notify such persons or parties indicating the time and place at which all affected persons or parties may meet to discuss the matters or shall, if the parties agree, exchange written communications provided each party and representative receives a copy of each written communication and has an opportunity to respond.

**10.402(2) Parties or their representatives.** If any party or representative wishes to discuss certain matters with the presiding officer, the presiding officer and the opposing party shall be so notified and the presiding officer upon notification of such wish shall advise the parties or their representatives

of the time and place at which the affected persons or parties may meet to discuss any matters or exchange written communications as provided in 10.402(1).

**661—10.403(17A) Sanctions.** Any party to a contested case proceeding may file a timely and sufficient affidavit asserting personal bias of an individual participating in the making of any proposed or final decision in that case. The department shall determine the matter as part of the record in the case. When the department in these circumstances makes such a determination with respect to a department member, that determination shall be subject to de novo judicial review in any subsequent review proceeding of the case.

**10.403(1)** The recipient of a prohibited communication as provided in Iowa Code section 17A.17 may be required to submit the communication, if written, or a summary of the communication, if oral, for inclusion in the record of the proceeding. As sanctions for violations of any prohibited communication provided in section 17A.17, a decision may be rendered against a party who violates these rules, or for reasonable cause shown the commissioner may censor, suspend, or revoke a privilege to practice before the department, or for reasonable cause shown after notice and opportunity to be heard, the commissioner may censor, suspend, or dismiss any departmental personnel.

**10.403(2)** A presiding officer receiving any prohibited communication without immediately notifying all parties shall be subject to censure, suspension or dismissal or recommendation of dismissal.

**661—10.404 to 10.499** Reserved.

#### LICENSES

**661—10.500(17A) Denial, revocation or suspension of license, refusal to renew license.** When the department is required by constitution or statute to provide notice and an opportunity for an evidentiary hearing prior to the refusal, denial, revocation or suspension of a license, a notice, as prescribed in 10.200(17A), shall be served by the department upon the licensee or applicant. Prior to the refusal, denial, revocation, or suspension of a license, the department shall give 30 days' written notice to the applicant or licensee in which to appear at a hearing to show cause why a license should not be refused, denied, revoked or suspended. In addition to the requirements of 10.200(17A), the notice shall contain a statement of facts or conduct and the provisions of law which warrant the denial, revocation or suspension of the license or the refusal to renew a license. If the licensee wishes, a petition may be filed as provided in 10.502(17A) with the presiding officer within the 30 days prior to the hearing. The department may, in its discretion, file an answer to a petition filed by the licensee prior to the hearing. Thereafter, the rules contained in this chapter governing contested case proceedings shall apply.

When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the department, and, in case the application is denied or the terms of the new license limited, until the last date for seeking judicial review of the department's order or a latter date fixed by order of the department or the reviewing court.

**661—10.501(17A) Revocation of license.** The department shall not revoke, suspend, annul or withdraw any license until written notice is served pursuant to 10.200(17A) within the time prescribed by the applicable statute and the licensee whose license is to be revoked, suspended, annulled or withdrawn is given an opportunity to show at an evidentiary hearing conducted pursuant to the rules governing contested case proceedings in this chapter compliance with all lawful requirements for the retention of the license. In addition to the requirements of 10.200(17A), the notice shall contain a statement of facts or conduct and the provisions of law which the revocation, suspension, annulment, or withdrawal of the license. A licensee whose license may be revoked, suspended, annulled, or withdrawn may file a petition as provided in 10.502(17A) with the presiding officer prior to the hearing.

The department may, in its discretion, file an answer to a petition filed by the licensee prior to the hearing. Thereafter, the rules contained in this chapter governing contested case proceedings shall apply. The notice referred to herein shall be served by personal service or by restricted certified mail.

Notwithstanding the above, if the department finds that public health, safety or welfare imperative-ly requires emergency action, and incorporates a finding to that effect in an order to the licensee, sum-mary suspension of a license shall be ordered pending proceedings as provided herein. These proceed-ings shall be promptly instituted and determined. When a summary suspension as provided herein is ordered, a notice of the time, place and nature of the evidentiary hearing shall be attached to the order.

**661—10.502(17A) Petition.** When a person desires to file a petition as provided in 10.501(17A) and 10.502(17A), the petition to be filed shall contain:

a. A caption in the following form:

BEFORE THE IOWA STATE DEPARTMENT OF PUBLIC SAFETY  
WALLACE STATE OFFICE BUILDING  
DES MOINES, IOWA

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IN THE MATTER OF _____	*	PETITION
(state petitioner’s name, address and type of license	*	DOCKET NO. _____
	*	(filled in by department)

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b. Substantially state in separate numbered paragraphs the following:

- (1) The full name of the petitioner and address;
- (2) The type of license and the relevant statutory authority;
- (3) Clear, concise and complete statements of all relevant facts showing why petitioner’s license should not be acted against;
- (4) Whether a similar license has previously been issued or held by petitioner and if previously acted against the reasons therefor;
- (5) The signature of the petitioner.

**661—10.503 to 10.599** Reserved.

DECLARATORY RULINGS

**661—10.600(17A) Request and issuance procedure.** Any oral or written advice or opinion rendered to members of the public by departmental personnel not pursuant to a petition for a declaratory ruling is not binding upon the department. However, departmental personnel, including field personnel, ordi-narily discuss substantive issues with a member of the public or representative prior to the receipt of a petition for a declaratory ruling, but such oral or written opinions or advice are not binding on the de-partment. This should not be construed as preventing members of the public or their representatives from inquiring whether the department will issue a declaratory ruling on a particular question. In such cases, however, the name of the inquirer shall be disclosed. The department will also discuss questions relating to certain procedural matters as, for example, submitting a request for a declaratory ruling or submitting a petition to initiate rule-making procedures. Members of the public may, of course, seek oral technical assistance from a departmental employee in regard to the proper preparation of an ap-plication or method of administratively interacting with or filing required information or reports with the department. Such oral advice is advisory only and the department is not bound to recognize it. If a

declaratory ruling is requested by a petitioner with a matter currently pending before the department, such ruling will not be issued until after the termination of the matter unless the commissioner wishes to issue one.

**10.600(1)** Declaratory rulings will not be issued by the department on matters in litigation. Declaratory rulings petitioned by one not a party to a contested case will not be issued in the event that the matter is involved in a contested case. The commissioner may issue a declaratory ruling to a protestor who petitioned for one, provided the commissioner determines that the matter can be more expeditiously resolved by a declaratory ruling than by the initiating or completing of contested case proceedings.

**10.600(2)** Upon the filing of an original and four copies of a proper petition of an interested person with the administration division, the department may issue a declaratory ruling as to the applicability of any rule or order of the department or the applicability of any statutory provision.

**10.600(3)** A petition for a declaratory ruling which is filed shall contain:

*a.* A caption in the following form:

THE IOWA STATE DEPARTMENT OF PUBLIC SAFETY  
WALLACE STATE OFFICE BUILDING  
DES MOINES, IOWA

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IN RE: THE PETITION OF _____	*	PETITION FOR
(state petitioner's name) FOR A		DECLARATORY RULING
DECLARATORY RULING ON _____	*	
(state rule number, statute for		DOCKET NO. _____
which interpretation sought, etc.)	*	(filled in by department)
	*	

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*b.* Substantially state in separate numbered paragraphs the following:

- (1) The full name of the petitioner, and address;
- (2) Clear and concise statements of the controversy or the uncertainty;
- (3) The statutory authority involved and the rules involved;
- (4) Clear, concise and complete statements of all relevant facts;
- (5) The reasons for prompting the petition together with a full disclosure of petitioner's interest therein;
- (6) Whether petitioner presently is involved in a matter pending before the department;
- (7) The signature of the petitioner.

**10.600(4)** Upon filing, such petition for declaratory ruling shall be given a docket number and shall become a matter of public record. The administrative services division may require the petitioner to file additional data or memoranda in support of a position taken by the petitioner.

**10.600(5)** Although no hearing need be granted to the petitioner or to any interested person in the usual course of disposition of a petition for a declaratory ruling, the administrative services may, in its discretion, order a hearing on the disposition of the petition if either petitioner submits a written request therefor with the filing of the petition stating in detail why a hearing is necessary for a fair consideration of the need for a declaratory ruling on the matter stated in the petition or if the department wishes a hearing.

**10.600(6)** All declaratory rulings shall be signed by the commissioner and issued within 30 days of filing unless good cause exists for a further period of time not to exceed a reasonable period. A declaratory ruling which is issued shall have the same status as an order rendered in a contested case and shall be final for purposes of appeal or judicial review.

**661—10.601 to 10.699** Reserved.

RULE MAKING

**661—10.700(17A) Rule-making proceedings.** Prior to the initiation of rule-making proceedings as set forth herein, rules which are proposed for adoption are approved by the commissioner. The channeling of rules varies with the circumstances. When a division determines that a rule or rules should be adopted on a particular subject, it prepares a rough draft of the rule or rules which is reviewed by the legal division, administration division and commissioner. After approval by the commissioner, the rule-making proceedings are initiated.

**661—10.701(17A) Initiation of rule-making proceedings.**

**10.701(1)** Prior to the adoption, amendment or repeal of any rule the department shall:

*a.* Give notice of its intended action by causing a notice to be published in the Iowa Administrative Code. Any notice of intended action shall be published at least 35 days in advance of the action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which the interested persons may present their views thereon.

*b.* Afford all interested persons reasonable opportunity to submit data, views, or arguments in writing pursuant to 10.704(17A). If timely requested in writing by 25 interested persons, by a governmental subdivision, by the administrative rules review committee, by another agency, or by an association having not less than 25 members, or in its discretion, the department shall give interested persons an opportunity to make oral presentations pursuant to 10.703(17A). The department shall consider fully all written and oral submissions respecting the proposed rule. Within 180 days following either the notice published according to the provisions set forth herein or the last day of the oral presentations on the proposed rule, whichever is later, the department shall adopt, amend or repeal a rule or shall terminate the proceeding. If requested to do so by an interested person, either prior to adoption or within 30 days thereafter, the department shall issue a concise statement of the principal reasons for and against the rule it adopted, amended or repealed, incorporating therein the reasons for overruling considerations urged against the rule.

**10.701(2)** When the department for good cause finds that notice and public participation would be impracticable, unnecessary, or contrary to the public interest, the provisions of 10.701(17A) shall be inapplicable. The department shall incorporate in each rule issued in reliance upon this subrule either the finding in a brief statement of the reasons therefor, or a statement that the rule is within a very narrow category of rules whose issuance has previously been exempted from 10.701(17A) relying on this subrule and including such a finding and statement of reasons for the entire category.

**661—10.702(17A) Petitions for adoption, amendment or repeal of a rule.** Any interested person may petition the department for the issuance, amendment, or repeal of any rule.

When a petition for the promulgation, amendment or repeal of a rule is received from an interested person, a copy of the petition is given to the appropriate division, commissioner, and legal division for their views and comments as to the propriety of the petition. If it is determined the petition disclosed sufficient justification, rule-making proceedings will be initiated.

**10.702(1)** A petition for rule making which is filed shall contain:

*a.* A caption in the following form:

THE IOWA STATE DEPARTMENT OF PUBLIC SAFETY  
WALLACE STATE OFFICE BUILDING  
DES MOINES, IOWA

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IN RE: _____ (interested person's name) REQUEST FOR _____ (adoption, amend- ment or repeal) OF RULE NUMBER _____ (if applicable)	*  * *  *	PETITION FOR RULE MAKING  DOCKET NO. _____ (filled in by department)
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*b.* Substantially state in separate numbered paragraphs the following:

- (1) Petitioner's name and address;
- (2) The text of any proposed rule or amendment identifying the section or sections of law involved or rule involved, or the rule sought to be repealed;
- (3) The reasons for seeking the requested action in detail, including any facts, views, data or arguments deemed relevant;
- (4) The nature of petitioner's interest in the subject matter;
- (5) The signature of the petitioner or representative.

**10.702(2)** A petition for rule making shall be filed with the administrative services division. The administrative services division may request the petitioner to submit additional facts, views or data and may require the petitioner to serve a copy of the petition upon persons or agencies known to be interested in the proposed rule making.

**10.702(3)** Upon filing, such petition for rule making shall be given a docket number and shall become a matter of public record. The department shall, within 60 days following the filing of the petition, either deny the petition in writing on the merits or initiate public rule-making procedures as set forth in 10.701(17A). After careful consideration, if it is determined that the petition does not disclose sufficient reasons to justify the commencement of public rule-making proceedings or if the petition materially fails to comply with the requirements of these rules, or if it is determined that petitioner is not an interested person, the petition shall be denied and the petitioner so notified together with any other relevant reasons for such denial; provided, however, that the provisions of this subrule shall not prevent the department, in its discretion, from acting on any matter disclosed in any petition.

**661—10.703(17A) Conduct of public hearing.** When required to do so, or in its discretion, the department shall conduct a public hearing. Each hearing shall be presided over by the commissioner or designee. The hearing shall be conducted in such a way that interested persons will have a reasonable opportunity to present their views or submit their arguments on matters relevant to the issues involved. The commissioner or designee shall have authority to take any action necessary for the orderly conduct of the hearing.

**10.703(1)** Each hearing shall be held at the time and place set in the notice of hearing, but at such time and place the hearing may be continued by the commissioner or designee to a later time or date and will be set for hearing at a different time and place without notice other than by announcement at the hearing.

**10.703(2)** A person who wishes to be assured of being heard shall submit, at least 15 days prior to the date of the hearing, an outline of the topics the person wishes to discuss, the time to be devoted to each topic and any written comments. An agenda will then be prepared containing the order of presentation of oral comments and the time allotted to such presentation. Ordinarily, a period of ten minutes will be the time allotted to each person for making oral comments. At the conclusion of the presenta-

tions of comments of persons listed in the agenda, to the extent time permits, other comments will be received.

**10.703(3)** In lieu of the reading of a prepared statement at the hearing, a person's oral comments shall ordinarily be limited to a discussion of matters relating to any written comments submitted and to questions and answers in connection therewith. Oral comments shall not be merely a restatement of matters the person may have submitted in writing. Persons making oral comments should be prepared to answer questions not only on topics listed in the outline but also in connection with other matters relating to the submitted written comments. In order to be assured of the availability of copies of such written comments or outlines on or before the hearing, any person who wishes such copies should make such a request within 15 days of the hearing and shall agree to pay a reasonable cost for copying. Persons who make such a request will be furnished copies as soon as they are available, but it may not be possible to furnish the copies before the beginning of the hearing. Except as provided in the preceding sentences, copies of written comments regarding the rules proposed shall not be made available at the hearing.

**10.703(4)** At the commencement of the hearing, the commissioner or designee shall read the notice of hearing and then shall outline briefly the procedure to be followed.

**10.703(5)** Every person shall, before proceeding to testify at the hearing, state their name, address, and whom they represent at the hearing and shall give such other information respecting their appearance as the commissioner or designee may request.

**10.703(6)** In the case of unusual circumstances or for good cause shown, the application of rules contained in this rule may be waived. To the extent resources permit, the public hearings to which this rule applies may be transcribed by the department and may be transcribed by anyone at that person's expense.

**10.703(7)** All outlines and written comments to be submitted prior to the hearing shall be addressed to the administration division.

**661—10.704(17A) Submission of written data, views or arguments.** All interested persons shall be afforded an opportunity to submit data, views, or arguments in writing within the time provided by the notice of proposed rule making.

**10.704(1)** Designations of material as confidential will not be accepted. Thus, a person submitting written comments in response to a notice of proposed rule making should not include therein material considered to be confidential or inappropriate for disclosure to the public. It will be presumed by the department that every written comment submitted to it in response to a notice of proposed rule making is intended by the person submitting it to be subject in its entirety to public inspection and copying.

**10.704(2)** Written comments in response to a notice of proposed rule making shall conform to 10.5(17A) and shall be submitted to the administration division.

These rules are intended to implement Iowa Code chapter 17A.

[Filed June 30, 1975]

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